EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MASSACHUSETTS - WORCESTER

IN THE MATTER OF:	Case #01-47641
ACT MANUFACTURING, INC.	Worcester, Massachusetts
	May 12, 2004
Debtor	9:33 a.m. O'clock
CRAIG JALBERT, LIQUIDATING CEO, As Representative of the Estate of the Consolidated Debtors	Adv. #03-4741
Plaintiff,	
v.	
ALCATEL USA MARKETING, INC	
Defendants.	

TRANSCRIPT OF HEARING IN THE ADVERSARY:
(#9) MOTION OF DEFENDANT FOR LEAVE TO FILE AMENDED ANSWER;
(#20) OPPOSITION OF PLAINTIFF
BEFORE THE HONORABLE JOEL B. ROSENTHAL, J.U.S.B.C.

APPEARANCES: (See Next Page)

Electronic Sound Recording Operator: Leah DiDonato

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(At Tape #1, Index #30. Time 9:33 a.m.)

MS. MAGEROWSKI: All right. Please be seated. ACT Manufacturing, Incorporated. Case #01-47641. Hearing in Adversary Proceeding 03-4741. Please identify yourselves for the record.

MR. DOWNES: Your Honor, Joe Downes on behalf of Craig Jalbert, the LCEO of the ACT Manufacturing bankruptcy estate.

MR. GOODING: Good morning, Your Honor. Douglas Gooding for Mr. Jalbert.

MR. REINGOLD: Good morning, Your Honor. Steven Reingold, Jager Smith, for the defendant.

THE COURT: All right, first let me take care of a little housekeeping. I received a motion *pro hac* from Mr. Friedman. All right. That's allowed.

All right, gentlemen, I'll hear you briefly.

MR. REINGOLD: Thank you, Your Honor. Just not to belabor the issue since I'm sure you --

THE COURT: Assume I've read the pleadings.

MR. REINGOLD: Thank you. Your Honor, this is one of what we believe to be the larger adversary proceedings of the more than 200 that were filed. The claim is over three million dollars, so it is, of course, rather important to my client. My client seeks to --

THE COURT: If it's so important, why didn't they

figure out their answer during the ninety days that they were given?

MR. REINGOLD: Well, Your Honor, there's a couple of responses to that. First and foremost, the time was spent reviewing the debtors' -- excuse me, the client's records to determine exactly what the relationship was between one or more of the debtor entities and this particular subsidiary. There are many payments at issue. It's a rather large and complicated corporate structure. It was a very difficult undertaking. It took a lot of time.

Moreover, the issues raised in these three affirmative defenses have to do with a settlement agreement that the debtors entered into with the parent entity and not this particular subsidiary, and that --

THE COURT: But was there anything that happened after -- all those facts were known to your client or should have been known -- no facts or events came to light after your answer was filed that changed anything, were there?

MR. REINGOLD: Well, Your Honor, the -- the existence of the release and the settlement agreement that approved it was something that was uncovered, if you will, by Mr. Friedman, lead counsel, in reviewing the overall Chapter 11 cases. As I said, the attention was focused specifically --

THE COURT: Well, your client knew about it. His counsel may not have.

MR. REINGOLD: Well, the client -- the subsidiary we don't believe did, Your Honor. It was the parent that entered into the agreement. And this is a large multi-national corporation. It's a very complicated structure.

THE COURT: Well, I assume that's why they gave you ninety days, and I assume you understood there was an understanding when the agreement was that there would be no further extensions. Now isn't -- why isn't what you're asking me to impose upon them contrary to the agreement that you made? Why isn't that an extension? You're supplementing your answer that you made a deal with them, and now you don't like the deal you made. Why shouldn't I look at it in that fashion?

MR. REINGOLD: Well, Your Honor, we don't see it as not liking the deal we made. The stipulation extending time gave us until the end of March to file and answer, but --

THE COURT: Which you did.

MR. REINGOLD: -- which we did -- but in no way did that implicate either explicitly or implicitly the parties' right under Rule 15 to file an amended pleading.

THE COURT: What does "no further extensions" mean, then?

MR. REINGOLD: Well, it means that we had to file an answer by the date we had agreed to. It did not mention much less implicate our rights under Rule 15. What's more, Your Honor, there is case law to this that nothing in Rule 12(b) or

Rule 8 limits a party's rights with a properly offered amendment under Rule 15A.

THE COURT: But can't the party contractually agree to limit that?

MR. REINGOLD: If the stipulation had said so, Yes, Your Honor, but we didn't mention Rule 15. It wasn't addressed. It wasn't the intent of the parties to limit any rights to amend or supplement pleadings. It was simply when does Alcatel USA Marketing have to put in a responsive pleading? What is that last date? A responsive pleading was filed by -- before that last date, Your Honor. I think it's not appropriate for plaintiff to argue that we are somehow breaching a contract we entered into with the debtors just simply allowing what's really a professional courtesy to get our -- if you will, our ducks in a row on a three million dollar preference claim.

Your Honor, this case is in its infancy, and what should have been a routine courtesy and a routine matter has turned into a very costly fight for the estate and for my client. We've got two lawyers for the estates here. We've got my time, lead counsel's time in an issue that was raised less than thirty days after the answer was originally filed.

THE COURT: But 120 days -- a little less than 120 days after -- or 90 days after your answer should have been filed, under the Rules.

MR. REINGOLD: Under the Rules, but we did have the extension, Your Honor.

THE COURT: But you -- you don't -- you want to read out of the extension the part that you don't like.

MR. REINGOLD: It's not that, Your Honor. That suggests some sort of malevolent intent on my client's part.

THE COURT: No. I think your client just didn't do their job during the ninety days and didn't do the best job they could, and they discovered some other stuff they could throw in there, and I think it's a little disingenuous to say that, "Gee, it's a big company. We didn't know what was going on."

MR. REINGOLD: Well, Your Honor --

THE COURT: I mean, I haven't gone back and looked at the appearances. Are you representing to me that neither you nor Mr. Friedman were involved when the releases were done before?

MR. REINGOLD: The release with the parent company, lead counsel on that Fish & Richardson. My firm was asked by Fish & Richardson to participate in some of the discussions that led up to the settlement agreement. We were not a party to that. We didn't draft it. That was a separate law firm. Neither Mr. Friedman's firm nor my firm were involved in the motion that led to the approval of the settlement agreement.

Your Honor, it's frustrating for my client, because

what happened was the client -- the subsidiary was focusing on ordinary course, new value, trying to track three million dollars of payments. The other legal issues raised by these three affirmative defenses -- well, you know, yes, in a perfect world, they would have come up earlier, but the attention was really focused on trying to look at the Bankruptcy Code cause of action and the Bankruptcy Code defenses.

Once it came to light the parent had an agreement that benefited the subsidiary, we promptly moved to bring that matter to the Court's attention, first by asking for an assent of the plaintiff to file an amended answer, and then when that was denied, even though we had explained the basis for the amendment, we then immediately moved for relief from this Court.

Your Honor, the standards under Rule 15 are well known, and I won't take the time to recite them, but I would like to respond to some of the point that plaintiff makes in his opposition regarding those particular issues.

Most specifically with respect to undue delay, discovery has not even commenced, Your Honor. There is no surprise to the plaintiff. There is no unfair prejudice here. What we're talking about are three legal, affirmative defenses -- not factual, but legal. There is no additional discovery that would have to be had, particularly since we've already apprised the plaintiff in advance of the basis for the

affirmative defenses. At worst, you're talking about drafting a couple more interrogatories and document requests which haven't been served anyway, Your Honor.

You know, this is distinguishable from the cases where parties seek to amend an answer in the midst of trial, after discovery has closed, after dispositive motions have been filed. We've just begun, Your Honor, and we don't see how there is unfair prejudice to the other side.

We're not talking about delaying matters, Your Honor. In fact, we've committed to the other side our intention to bring these legal issues to the Court's attention by way of a summary judgment motion as soon as practicable, and by the end of the month, if possible. So we're not looking to delay matters. This isn't a litigation tactic. It's simply trying to preserve the client's rights that it has to bring legal issues before the Court.

With -- those goes to the heart of the defenses, Your Honor. The futility arguments that plaintiff raises, we obviously don't agree with. If plaintiff disagrees with the merits of the defenses, that's one thing; but that's not the standard at this early stage of the litigation.

We're talking here about a very significant cause of action. We're talking about a very substantial --

THE COURT: That's -- you know, that cuts both ways, though. If it's such a significant cause of action, how can

you excuse the fact that you didn't plead it properly within the ninety days? Ninety days is a long time.

MR. REINGOLD: Again, Your Honor --

THE COURT: Especially in my court, where this case -- you know, a pre-trial order issued, and I'd be ready to try this case in a couple of months.

MR. REINGOLD: Again, Your Honor, the reason for the delay was that the client was focusing on the Bankruptcy Code defenses --

THE COURT: I understand that, but that -- you're just assuming because they were focusing, that's an excuse.

MR. REINGOLD: Not offering it as an excuse, Your Honor. We're moving as fast as we can. The parties have agreed to extend discovery out because of the complexity of the issues. There are a number of issues that are unique to this adversary that we don't believe have been raised in any of the other 200-plus that were raised, even setting aside the dollar amounts at issue, Your Honor.

We think that there are a lot of legal issues that have to be presented, and we're looking to do that as expeditiously as possible. Bringing to the Court's attention these three additional affirmative defenses is one way of doing that.

Your Honor, with respect to whether the client knew of the release and the related ramifications, even if that's so

and should have been brought earlier, it doesn't rise to the level of whether the affirmative defense is futile, which is what the plaintiff is arguing. Futility is a very high standard to meet, and I don't think under the controlling cases that this falls under that.

If Your Honor would like, I'd like to address the specifics with respect to that release language, because that really goes to the heart of the amendment. If not, we can save it for summary judgment. I'll leave that to the Court.

THE COURT: Just proceed. Argue what you wish.

MR. REINGOLD: Thank you, Your Honor.

All three of these affirmative defenses relate to the settlement agreement that this Court approved prior to confirmation of the debtors' plan of reorganization, and the settlement agreement is between the debtors and the various estates, and Alcatel, the parent of this entity, and it is very broad and very specific in what it released and what it didn't. There are very specifically defined terms such as "affiliate," "cause of action," -- or "action in claim," excuse me. And carved out from the release is a specific exception for sub-Chapter 5 causes of action against Alcatel, which is defined as the parent; but the release language, which is not part of the carve-out, is for Alcatel, its affiliates -- which is a defined term -- and its subsidiaries.

This was a heavily negotiated settlement with the

Committee, with the debtors, and with the Alcatel parent. It's a legal issue that we'd like to raise as soon as possible. The confirmation order which plaintiff relies on has specific language excepting out situations such as this. If I may, Your Honor, the confirmation order provided on page 12, paragraph 4, that:

> "Except as provided in the plan and two settlements, or as provided in a prior or future order of this Court, no assets of the estates shall be deemed abandoned, and no cause of action shall be deemed released or compromised by or as a result of the plan,"

et cetera.

Here, the release and the settlement agreement approving it were approved by this Court prior to confirmation, and the confirmation order provides that in a conflict between it and the plan, its terms control. So we think we have a valid legal issue here that is not a futile attempt to raise at this time, Your Honor. And therefore, under the liberal standards of Rule 15, Alcatel should be allowed to at least raise it. We may lose on the issue on the merits at a later date, but that's not the test at this early stage, Your Honor. The interest of justice, when viewed through the lens of the debtors as opposed through Alcatel, clearly, we believe that the scale weighs in favor of Alcatel.

By denying Alcatel leave at this early stage contravenes what we believe to be the spirit and the letter of Rule 15 and would unduly prejudice my client; whereas, allowing us to proceed to file an amended answer does not delay the case, it does not create an undue burden for the estate, and we think certainly is not futile.

Your Honor, in summary, this case in infancy, and we don't think that the motion should be denied. We would appreciate that Alcatel be permitted to amend its answer.

THE COURT: Thank you.

MR. REINGOLD: Thank you.

THE COURT: Mr. Downes.

MR. DOWNES: Good morning, Your Honor. Your Honor, to begin with, the LCEO, you know, fully acknowledges that under usual circumstances that leave to amend is freely given and that he understands the liberality with which Courts typically grant amendments. But this case is different, and it's different in two material respects:

As it's been noted, Your Honor, we fully assert that Alcatel has waived its right to assert these affirmative defenses pursuant to the stipulation. It's a contractual agreement between the parties whereby they agree to no further extensions. We disagree with counsel's interpretation of that. As we've seen from his pleadings and now from his argument here today, he parses the language of these agreements very

narrowly; and clearly, the 90 days was granted to allow Alcatel to get their ducks in a row, to put everything they have into this answer, and to move forward. They didn't do that, and therefore, they shouldn't be given a second bite at the apple to try to assert these affirmative defenses here today.

Secondly, Your Honor, we also believe that the motion for leave to amend should be denied because the affirmative defenses that Alcatel seeks to add, they're simply futile. At best they're futile and without merit. At worst they're brought in bad faith and interposed for a delay.

Specifically, Your Honor, I'll address the first of the two affirma -- or the first -- the two affirmative defenses that they're raising on the basis that the LCEO is somehow now not empowered to bring these avoidance actions. Those are the defenses of *res judicata* and also estoppel.

Clearly, Your Honor, we've set forth the relevant portions of the plan, of the disclosure statement, and the confirmation order in our pleadings. We don't think we need to recite them here today, but essentially the ***Bankvest*** decision essentially mirrors the plan that we have here before us today, Your Honor, and essentially the Court has disposed of this exact issue already, saying that nearly identical language that existed in the ***Bankvest*** plan -- it's found in the plan here today, allows the, and empowers the LCEO to bring such action, and really don't think that this issue deserves too much

further discussion.

With respect to the release, Your Honor, they're trying to bring that as the third affirmative defense. And essentially what Alcatel is arguing is because of a scrivener's error that Alcatel is defined in such a way that the parent company, which did not receive any transfers within the 90 days, we reserve the right to bring actions against them as opposed to the subsidiary here, which received over three million dollars within the ninety days -- clearly that was not the intent of the parties here, Your Honor.

Clearly, the circumstances surrounding this case will show, and do show that they were not a party to the contract. There was no consideration for maintaining claims against Alcatel but releasing the entity which received over three million dollars in claims and essentially the Committee and their participation in this was also mischaracterized by counsel as well. Counsel said that the Committee was heavily involved in negotiations. That is not so, Your Honor. This is -- the settlement agreement that he is referring to was between essentially the debtor's counsel at the time, Mintz Levin, at the behest of the banks, Your Honor, and also -- and Alcatel. The Committee filed a late objection, specifically intending to reserve any and all preference actions. The LCEO had not been appointed to that time, and clearly his investigation of the preference actions was not completed at such time. But without

doubt, the intent here was to reserve such actions.

Now -- and again, opposing counsel really relies on the strict interpretation of this contract, Your Honor. I think you could see, just from a, you know, a cursory review that it is replete with errors. Specifically, if you look to the specific portion of the release here, mutual release 4(b), when it enumerates the --

THE COURT: Do I have that document?

MR. DOWNES: If you do not, I'd be happy to approach.

THE COURT: No, I mean, do I have that document in the -- amongst the papers that I have on this --

MR. DOWNES: I do not believe so.

THE COURT: Okay. Go ahead.

MR. DOWNES: Well, essentially it enumerates the Code sections under Chapter 5, which the plaintiff has reserved, and it says 502(d), 544, 547, 548, 549, and then instructively here at Section 500, Your Honor -- obviously another scrivener's error. I mean, by counsel's strict interpretation, we'd be essentially arguing -- he'd be essentially stating that to the extent Congress should subsequently enact Section 500 to the Bankruptcy Code, that that was actually what was bargained for.

THE COURT: So he wants that one strictly construed, but he wants your agreement on the answer liberally construed.

It depends on -- his construction methods depend on whether his ox is being gored or not, is what you're telling me.

MR. DOWNES: Exactly, Your Honor. And therefore also, and just to counter some of the arguments that he had made with respect to the fact that there hasn't been any undue delay, I think certainly, Your Honor, this isn't a case where the amendment's been brought on the ninth day of trial; but obviously the delay portion here has to be read in light of the contractual agreement between the parties. Ninety days, like you said, is a long time, Your Honor. They were given plenty of time to get their answer together and to file it and to assert all of their affirmative defenses, and failing to do so, Your Honor, we feel that they have waived it. And to the extent they were -- to the extent otherwise, Your Honor, these claims clearly were futile, without merit, and therefore should not be allowed.

THE COURT: Thank you.

MR. DOWNES: Thanks.

THE COURT: Mr. Reingold, I'll give you the last word.

MR. REINGOLD: Thank you, Your Honor. Just a couple of --

THE COURT: The last brief word.

MR. REINGOLD: Just a couple of brief points. First, with respect to Bankvest, Your Honor, we're not here

arguing that the liquidating CEO lacks standing to bring avoidance actions. It's a little more subtle than that. What we're saying is, by way of the release and the confirmation order language that I quoted, that the liquidation supervisor -- I'm sorry, Liquidating CEO, has -- is subject to release and waiver *res judicata*/estoppel-type defenses. It's not that he has no standing to bring these. We're not arguing that. We're arguing that these claims should -- these particular claims should not be brought.

Your Honor, with respect secondly and lastly with respect to the release, the lack of consideration, the scrivener's errors -- if allowed to bring the -- to file the amended answer, Alcatel, as I indicated, will bring a summary judgment motion quickly. Your Honor will see at that time that these were not mere scrivener's errors, and, in fact, in the motion to amend the relevant language is quoted in my motion. These are specific definitions, Your Honor, relating to the term "affiliate," relating to the term "Alcatel," what was released, what was not release, "action" and "claim." These terms were specifically defined. It's not a question of a transcription error or a zero where a five should have been. This was a contemplated term that was used.

Lastly, Your Honor, with respect to the consideration issue, there is no case law that I was able to discovery under Massachusetts law, and plaintiff has not cited any, where a

subsidiary named specifically in a release like this needs to have its own independent and separate consideration for the bargain for release.

THE COURT: Thank you.

MR. REINGOLD: Thank you, Your Honor.

THE COURT: I am not convinced by Mr. Reingold's argument. I think you -- Alcatel knew or should have known about the defenses. If this case had followed its normal course, but for the courtesies that have been extended by the plaintiff, this case would be just about done with discovery, and we would be talking about a trial.

This is a preference action, pure and simple. It's not as sophisticated as one would think. I believe that the parties agreed to give an extended time to answer to avoid exactly this kind of situation, and I see no reason and I've heard no reason why I shouldn't enforce that agreement.

So for those reasons, the motion is denied. I find that you contractually agreed to one shot at the apple for filing an answer, and that time has come and gone. Thank you.

MR. REINGOLD: Thank you, Your Honor.

MR. DOWNES: Thank you, Your Honor.

(End at Tape #1, Index #1315. 9:54 a.m.)

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I certify that the foregoing is a true and accurate transcript from the electronically sound recorded record of the proceedings.

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